

2005 DRAFTING REQUEST

Assembly Substitute Amendment (ASA-AB489)

Received: **08/15/2005**

Received By: **mdsida**

Wanted: **As time permits**

Identical to LRB:

For: **Tony Staskunas (608) 266-0620**

By/Representing: **Adrienne**

This file may be shown to any legislator: **NO**

Drafter: **mdsida**

May Contact:

Addl. Drafters:

Subject: **Criminal Law - miscellaneous**
Criminal Law - procedure
Criminal Law - homicide
Criminal Law - sex offenses

Extra Copies:

Submit via email: **YES**

Requester's email: **Rep.Staskunas@legis.state.wi.us**

Carbon copy (CC:) to: **cathlene.hanaman@legis.state.wi.us**
robin.ryan@legis.state.wi.us

Pre Topic:

No specific pre topic given

Topic:

Statute of limitations for certain felonies where DNA evidence exists

Instructions:

See Attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
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FE Sent For:

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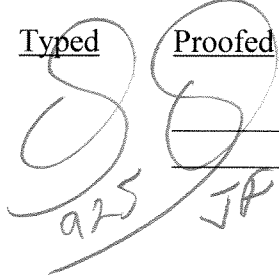

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FE Sent For:

<END>

Dsida, Michael

From: Ramirez, Adrienne
Sent: Tuesday, August 02, 2005 2:54 PM
To: Dsida, Michael
Subject: Amendment request

Mike -

Tony would like you to please draft a substitute amendment to AB 489, his proposal to eliminate statutes of limitation on crimes with DNA evidence.

The Criminal Justice Committee held a public hearing on AB 489. As a result of testimony and discussion, Tony would like to limit the scope of the bill. First he would like AB 489 to only apply to crimes within Chapters 940 and 948. Additionally, I have sent via Assembly Page, some language from the Avery Task Force draft. From this draft proposal he would like to include the time limit of one year after law enforcement is aware of a DNA match they must commence prosecuting the crime. The last item to be included in the Substitute Amendment would be a revision of 939.74. Tony does not want it as specific regarding where the biological evidence is collected. In AB 489 it specifies 'left on a victim, on clothing worn by the victim, or on any object located at any place at which the offense is committed.' Can this be eliminated, or made more vague?

Call if you have any questions. Thanks for your help.

Adrienne
Office of Rep. Tony Staskunas
6-0620

BILL

laboratories prioritize postconviction DNA testing ordered by a court over other work of the laboratories.

Time limits for prosecuting a crime related to a felony sexual assault

Current law imposes time limits for commencing prosecution of most crimes. Prosecution of a felony sexual assault must be commenced within six years after the assault, except that prosecution of sexual assault of a child may be commenced at any time before the victim reaches the age of 45. However, if the state collects DNA evidence in connection with a first- or second-degree sexual assault or a sexual assault of a child before the time for prosecution expires and does not match the DNA evidence with an identified person until after that time expires, the state may initiate prosecution for the assault within one year after making the match.

This bill applies the time limits for prosecuting felony sexual assaults as well as the DNA exception from those time limits to crimes that are related to a felony sexual assault. Under the bill, crimes are related if they are committed against the same victim, are proximate in time, and are committed with the same intent, purpose, or opportunity so as to be part of the same course of conduct.

Eyewitness identification of a suspect

This bill requires law enforcement agencies to adopt written policies governing the use of an eyewitness to identify a person suspected of committing a crime. The policies must apply to practices under which an eyewitness identifies a suspect upon viewing him or her in person, such as in a lineup, and to practices under which an eyewitness identifies a suspect upon viewing a representation of the suspect, as by viewing a photograph array. The policies must be designed to reduce the potential of erroneous identifications by eyewitnesses.

For further information see the ***state and local*** fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 165.75 (3) (g) of the statutes is created to read:

2 165.75 (3) (g) Deoxyribonucleic acid testing ordered under s. 974.07 shall have
3 priority over other work of the laboratories.

4 **SECTION 2.** 165.77 (2m) (a) of the statutes is repealed.

5 **SECTION 3.** 165.77 (2m) (b) of the statutes is amended to read:

6 165.77 (2m) (b) The If the laboratories analyze biological material pursuant to
7 an order issued under s. 974.07 (8), the laboratories may compare the data obtained

BILL

1 retention of the material exhibit, the court shall preserve the material ensure that
2 the exhibit is retained until the discharge date of the person who made the request
3 or on whose behalf the request was made, subject to a court order issued under s.
4 974.07 (7), (9) (a), or (10) (a) 5., unless the court orders destruction or transfer of the
5 ~~biological material~~ exhibit under s. 974.07 (9) (b) or (10) (a) 5.

6 **SECTION 21.** 939.74 (2d) (am) of the statutes is created to read:

7 939.74 (2d) (am) For purposes of this subsection, crimes are related if they are
8 committed against the same victim, are proximate in time, and are committed with
9 the same intent, purpose, or opportunity so as to be part of the same course of
10 conduct.

11 **SECTION 22.** 939.74 (2d) (b) and (c) of the statutes are amended to read:

12 939.74 (2d) (b) If before the time limitation under sub. (1) expired, the state
13 collected biological material that is evidence of the identity of the person who
14 committed a violation of s. 940.225 (1) or (2), the state identified a deoxyribonucleic
15 acid profile from the biological material, and comparisons of that deoxyribonucleic
16 acid profile to deoxyribonucleic acid profiles of known persons did not result in a
17 probable identification of the person who is the source of the biological material, the
18 state may commence prosecution of the person who is the source of the biological
19 material for the violation of s. 940.225 (1) or (2) or a crime that is related to the
20 violation within 12 months after comparison of the deoxyribonucleic acid profile
21 relating to the violation results in a probable identification of the person.

22 (c) If before the time limitation under sub. (2) (c) expired, the state collected
23 biological material that is evidence of the identity of the person who committed a
24 violation of s. 948.02 (1) or (2) or 948.025, the state identified a deoxyribonucleic acid
25 profile from the biological material, and comparisons of that deoxyribonucleic acid

BILL**SECTION 22**

1 profile to deoxyribonucleic acid profiles of known persons did not result in a probable
2 identification of the person who is the source of the biological material, the state may
3 commence prosecution of the person who is the source of the biological material for
4 the violation of s. 948.02 (1) or (2) or 948.025 or a crime that is related to the violation
5 within 12 months after comparison of the deoxyribonucleic acid profile relating to the
6 violation results in a probable identification of the person.

7 **SECTION 23.** 968.205 (2) of the statutes is amended to read:

8 968.205 (2) Except as provided in sub. (3), if physical evidence that is in the
9 possession of a law enforcement agency includes any biological material that was
10 collected in connection with a criminal investigation that resulted in a criminal
11 conviction, delinquency adjudication, or commitment under s. 971.17 or 980.06 and
12 the biological material is from a victim of the offense that was the subject of the
13 criminal investigation or may reasonably be used to incriminate or exculpate any
14 person for the offense, the law enforcement agency shall preserve the physical
15 evidence until every person in custody as a result of the conviction, adjudication, or
16 commitment has reached his or her discharge date.

17 **SECTION 24.** 968.205 (2m) of the statutes is created to read:

18 968.205 (2m) A law enforcement agency shall retain evidence to which sub. (2)
19 applies in an amount and manner sufficient to develop a deoxyribonucleic acid
20 profile, as defined in s. 939.74 (2d) (a), from the biological material contained in or
21 included on the evidence.

22 **SECTION 25.** 968.205 (3) (intro.) of the statutes is amended to read:

23 968.205 (3) (intro.) Subject to sub. (5), a law enforcement agency may destroy
24 evidence that includes biological material before the expiration of the time period
25 specified in sub. (2) if all of the following apply:

BILL

978.08 (4) A notice provided under sub. (3) (a) shall clearly inform the recipient that the ~~biological material~~ evidence will be destroyed unless, within 90 days after the date on which the person receives the notice, either a motion for testing of the ~~material~~ evidence is filed under s. 974.07 (2) or a written request to preserve for retention of the material evidence is submitted to the district attorney.

SECTION 40. 978.08 (5) of the statutes is amended to read:

978.08 (5) If, after providing notice under sub. (3) (a) of its intent to destroy ~~biological material~~ evidence, a district attorney receives a written request to preserve for retention of the material evidence, the district attorney shall preserve retain the material evidence until the discharge date of the person who made the request or on whose behalf the request was made, subject to a court order issued under s. 974.07 (7), (9) (a), or (10) (a) 5., unless the court orders destruction or transfer of the ~~biological material~~ evidence under s. 974.07 (9) (b) or (10) (a) 5.

SECTION 41. Initial applicability.

(1) TIME LIMITS FOR PROSECUTING CRIMES RELATED TO SEXUAL ASSAULTS. The treatment of section 939.74 (2d) (am), (b), and (c) of the statutes first applies to offenses that are not barred from prosecution on the effective date of this subsection.

SECTION 42. Effective date.

(1) EYEWITNESS IDENTIFICATION PROCEDURES. The treatment of section 175.50 of the statutes takes effect on the first day of the 12th month beginning after publication.

(END)

2005 ASSEMBLY BILL 489

TODAY
FRIDAY

June 14, 2005 - Introduced by Representatives STASKUNAS, SHILLING, HINES, MUSSER, LEHMAN, BERCEAU and GUNDERSON, cosponsored by Senators ROESSLER, A. LASEE and HANSEN. Referred to Committee on Criminal Justice and Homeland Security.

Reopen cat.

INS 1/4

- 1 AN ACT *to renumber* 939.74 (2) (a); *to amend* 939.74 (1), 939.74 (2) (c) and
2 946.88 (1); *to repeal and recreate* 939.74 (2) (intro.); and *to create* 939.74 (2d)
3 (d) and 939.74 (2m) of the statutes; **relating to:** the statute of limitations for
4 certain felonies in which biological material is left on the victim or at the crime scene.

Analysis by the Legislative Reference Bureau

In general, a criminal prosecution must be commenced within three years after the offense, if the offense is a misdemeanor, or within six years after the offense, if the offense is a felony. Prosecutors have significantly longer periods of time in which to begin a prosecution for second-degree reckless homicide, for physical abuse of a child, and for certain child sex offenses. In addition, there is no limitation period at all for first-degree or second-degree intentional homicide, first-degree reckless homicide, or felony murder (causing the death of a person while committing one of several specified felonies). A prosecution for one of those offenses may occur at any time.

Current law also provides for extending an applicable limitation period under certain circumstances. One such provision relates to cases of first-degree or second-degree sexual assault. Another relates to cases of first-degree or second-degree sexual assault of a child or repeated sexual assault of a child. Both of those provisions require the state to have biological material that establishes a deoxyribonucleic acid (DNA) profile for the offender before the normal deadline for commencing the prosecution. If, even with that material, the state is unable to establish the identity of the offender before that deadline, but it later uses the DNA

ASSEMBLY BILL 489

to identify that person, the prosecution may be commenced within one year after that identification.

This bill eliminates the limitation period any felony in which the offender, while committing the offense, leaves biological material that is evidence of his or her identity on a victim, on clothing worn by the victim, or on any object located at the crime scene. Under the bill, a prosecution for such an offense may occur at any time.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. 939.74 (1) of the statutes is amended to read:

939.74 (1) Except as provided in subs. (2) and, (2d), (2m), and (2r) and s. 946.88 (1), prosecution for a felony must be commenced within 6 years and prosecution for a misdemeanor or for adultery within 3 years after the commission thereof. Within the meaning of this section, a prosecution has commenced when a warrant or summons is issued, an indictment is found, or an information is filed.

SECTION 2. 939.74 (2) (intro.) of the statutes is repealed and recreated to read:

939.74 (2) (intro.) Unless sub. (2d) or (2m) applies:

SECTION 3. 939.74 (2) (a) of the statutes is renumbered 939.74 (2r).

SECTION 4. 939.74 (2) (c) of the statutes is amended to read:

939.74 (2) (c) A prosecution for violation of s. 948.02, 948.025, 948.03 (2) (a), 948.05, 948.06, 948.07 (1), (2), (3), or (4), 948.075, 948.08, or 948.095 shall be commenced before the victim reaches the age of 45 years or be barred, except as provided in sub. (2d) (e).

SECTION 5. 939.74 (2d) (d) of the statutes is created, to read:

939.74 (2d) (d) This subsection does not apply in cases in which sub. (2m) applies.

SECTION 6. 939.74 (2m) of the statutes is created to read:

2r

ASSEMBLY BILL 489

939.74 (2m) A prosecution for a felony may be commenced at any time if, while committing the offense, biological material that is evidence of the identity of the offender is left on a victim, on clothing worn by the victim, or on any object located at any place at which the offense is committed. In this subsection, “place at which the offense is committed” includes any place where the offender acts or fails to act if the offender’s act or failure to act constitutes an element of the offense.

SECTION 7. 946.88 (1) of the statutes is amended to read:

946.88 (1) ~~A. Unless s. 939.74 (2m) applies, a criminal or civil action or proceeding under ss. 946.80 to 946.88 may be commenced at any time within 6 years after a violation under ss. 946.80 to 946.88 terminates or the cause of action accrues. If a criminal action or proceeding under ss. 946.80 to 946.88 is brought, or intervened in, to punish, prevent or restrain any such violation, the running of the period of limitations with respect to any civil action or proceeding, including an action or proceeding under s. 946.87, which is based in whole or in part upon any matter complained of in the criminal action or proceeding shall be suspended for 2 years following the termination of the criminal action or proceeding.~~

SECTION 8. Initial applicability.

(1) This act first applies to any offense the prosecution of which is not barred on the effective date of this subsection.

(END)

**2005-2006 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU**

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MGD:.....

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involving DNA evidence

analysis INSERT A

This bill makes the law described in the previous paragraph applicable to all felonies under chapter 940 or 948 of the statutes (which cover crimes against life and bodily security and crimes against children, respectively) except for those that have no limitation period. Under the bill, if the state has biological material that establishes a DNA profile for a person committing such a felony before the normal deadline for commencing the prosecution but is unable to use the DNA to identify that person until after the deadline, the prosecution may be commenced within one year after that identification.

INSERT 2/14

SECTION 1. 939.74 (2d) (b) of the statutes is amended to read:

939.74 (2d) (b) If before the applicable time limitation under sub. (1) or (2) expired, the state collected biological material that is evidence of the identity of the person who committed a ~~violation of s. 940.225 (1) or (2)~~ felony under ch. 940 or 948, the state identified a deoxyribonucleic acid profile from the biological material, and comparisons of that deoxyribonucleic acid profile to deoxyribonucleic acid profiles of known persons did not result in a probable identification of the person who is the source of the biological material, the state may commence prosecution of the person who is the source of the biological material for ~~violation of s. 940.225 (1) or (2)~~ the felony within 12 months after comparison of the deoxyribonucleic acid profile relating to the violation results in a probable identification of the person. ✓

History: 1981 c. 280; 1985 a. 275; 1987 a. 332, 380, 399, 403; 1989 a. 121; 1991 a. 269; 1993 a. 219, 227, 486; 1995 a. 456; 1997 a. 237; 2001 a. 16, 109; 2003 a. 196, 279, 326.

SECTION 2. 939.74 (2d) (c) of the statutes is repealed. ✕